

SHB 1347 - S COMM AMD

By Committee on Financial Institutions, Housing & Consumer  
Protection

ADOPTED 04/15/2005

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** (1) If a check as defined in RCW 62A.3-104  
4 is dishonored by nonacceptance or nonpayment and the check is assigned  
5 or written to a collection agency as defined in RCW 19.16.100, the  
6 collection agency may collect a reasonable handling fee for each  
7 instrument. If the collection agency or its agent provides a notice of  
8 dishonor in the form provided in section 2 of this act to the drawer  
9 and the check amount plus the reasonable handling fee are not paid  
10 within thirty-three days after providing the notice of dishonor, then,  
11 unless the instrument otherwise provides, the drawer of the instrument  
12 is liable for payment of interest at the rate of twelve percent per  
13 annum from the date of dishonor, and a cost of collection of forty  
14 dollars or the face amount of the check, whichever is less, payable to  
15 the collection agency. In addition, in the event of court action on  
16 the check and after notice and the expiration of the thirty-three days,  
17 the court shall award reasonable attorneys' fees, and three times the  
18 face amount of the check or three hundred dollars, whichever is less,  
19 as part of the damages payable to the collection agency. This section  
20 does not apply to an instrument that is dishonored by reason of a  
21 justifiable stop payment order.

22 (2) Subsequent to the commencement of an action on the check under  
23 subsection (1) of this section but prior to the hearing, the defendant  
24 may tender to the plaintiff as satisfaction of the claim, an amount of  
25 money equal to the face amount of the check, a reasonable handling fee,  
26 accrued interest, collection costs equal to the face amount of the  
27 check not to exceed forty dollars, and the incurred court costs,  
28 service costs, and statutory attorneys' fees.

29 (3) Nothing in this section precludes the right to commence action  
30 in a court under chapter 12.40 RCW for small claims.



1 to be a false, deceptive, or misleading representation; nor shall it be  
2 construed to be unfair or unconscionable; nor shall it otherwise be  
3 construed to violate any law.

4 (3) In addition to sending a notice of dishonor to the drawer of  
5 the check under this section, the person sending notice shall execute  
6 an affidavit certifying service of the notice by mail. The affidavit  
7 of service by mail must be substantially in the following form:

8 AFFIDAVIT OF SERVICE BY MAIL

9 I, . . . . ., hereby certify that on the . . . . . day of  
10 . . . . ., 20. . . ., a copy of the foregoing Notice was served on  
11 . . . . . by mailing via the United States Postal Service, postage  
12 prepaid, at . . . . ., Washington.

13 Dated: . . . . .  
14 (Signature)

15 (4) The person enforcing a check under this section shall file the  
16 affidavit and check, or a true copy thereof, with the clerk of the  
17 court in which an action on the check is commenced as permitted by  
18 court rule or practice.

19 NEW SECTION. **Sec. 3.** No interest, collection costs, and  
20 attorneys' fees, except handling fees, are recoverable on any  
21 dishonored check under the provisions of section 1 of this act where a  
22 collection agency or its agent, employee, or assign has demanded:

23 (1) Interest or collection costs in excess of that provided by  
24 section 1 of this act; or

25 (2) Interest or collection costs prior to the expiration of thirty-  
26 three days after the serving or mailing of the notice of dishonor, as  
27 provided by section 1 or 2 of this act; or

28 (3) Attorneys' fees other than statutory attorneys' fees without  
29 having the fees set by the court, or any attorneys' fees prior to  
30 thirty-three days after the serving or mailing of the notice of  
31 dishonor, as provided by section 1 or 2 of this act.

32 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act are each  
33 added to chapter 62A.3 RCW under the subchapter heading "DISHONOR."

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1        On page 1, line 1 of the title, after "checks;" strike the  
2 remainder of the title and insert "and adding new sections to chapter  
3 62A.3 RCW."

EFFECT: First, the conclusive presumption that the debtor received notice of a dishonored check three days after mailing a notice is taken out, allowing a debtor to demonstrate that he or she did not receive notice.

Second, instead of allowing a collection agency to either retain an affidavit certifying notice or file the affidavit with the court, the agency is required to file the affidavit and check (or a copy thereof) with the court.

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